

REMARKS

Claims 48, 49, 52-77 and 79 are pending in the application. By this Amendment, claims 48, 52, 73 and 79 are amended and claims 50, 51 and 78 are canceled without prejudice or disclaimer to the subject matter set forth therein.

Reconsideration and allowance in view of the following remarks are respectfully requested. Applicant respectfully submits that the conclusions set forth in the Office Action are unsupported by the teachings of Johnson, U.S. Patent 6,999,943

A. The 35 U.S.C. 102 Rejection

In the Office Action, claims 48-79 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnson et al. (hereinafter Johnson) U.S. Patent 6,999,943. This rejection is traversed.

Claim 48 recites “performing, after identifying the single payment source and the payee account, an optimization determination to determine a payment mechanism to use to transfer the funds” in conjunction with other features. As discussed in Applicant’s prior December 8, 2008 Response, Applicant respectfully submits that Johnson fails to teach or suggest such claimed features. Relatedly, Applicant respectfully submits that the various assertions set forth in the Office Action, to support the 35 U.S.C. 102 rejection, are misplaced and unsupported, as discussed in the December 8, 2008 Response.

In general, Applicant submits that the teachings of Johnson relate to the selection of the payment source, and that the conclusions in the Office Action that such teachings describe the claimed feature of optimization of routing after the single source is identified, are unsupported.

Applicant notes the ‘Response to Arguments’ comments on pages 2-3 of the Office Action. Applicant respectfully submits that such responsive comments fail to address the

deficiencies of the rejection as set forth in Applicant's December 8, 2009 Response.

The Office Action asserts:

... Johnson further teaches that payment from the checking account can be made via ACH transaction or debit card transaction or alternate channel (column] 7, line 65 thru column 18, line 14). Johnson further teaches that **this determination can be performed automatically**, using a computer processor in conjunction with the transaction evaluator (column 19, lines 21-52 and Figure 2 and Figure 3). Therefore, the computer processor makes the determination, after identifying the payment source (e.g. checking account), whether to process the transaction as a debit card transaction, ACH or alternate channel based on relevant data. ...

(emphasis added)

Applicant acknowledges that Johnson does indeed teach of different channels including ACH transaction or debit card transaction. However, the assertion in the Office Action that "Johnson further teaches that this determination can be performed automatically, using a computer processor in conjunction with the transaction evaluator (column 19, lines 21-52 and Figure 2 and Figure 3)" is unsupported. Applicant submits that the Office Action is asserting (and relying on) an association between disclosure of Johnson which is simply not there.

That is, the disclosure of Johnson in column 19, lines 21-52, sets forth little more than boilerplate computer language. Such disclosure of Johnson does describe that the transaction evaluators might be automated. However, Applicant submits that to take such general assertion of Johnson, and conclude that the "channel determination" is automated, extends beyond a fair interpretation of Johnson's teachings. The referenced Figs. 2 and 3 are seen to be no more relevant. That is, in Fig. 3 for example, after the payment method is selected in step 350, all that is described is the notification of step 360 and the "process transaction with selected issuer" of step 370. Such steps 350 and 370 clearly fail to support the conclusion in the Office Action (on page 2, line 20) - that the determination of channel can be performed automatically.

Accordingly, Applicant respectfully submits that the assertions in the "Response to

Arguments” are misplaced.

Under 35 U.S.C. §102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. *In re Sun*, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. *Id.* “A prior art reference anticipates a claim only if the reference discloses, either expressly or inherently, **every limitation of the claim.**” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). “The **identical invention** must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226 (Fed. Cir. 1989). “Absence from the reference of **any** claimed element negates anticipation.” *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986).

In order to expedite prosecution Applicant has further amended the claims. In particular, for example, claim 48 is amended to recite:

the processor identifying a single payment source includes the processor performing a second optimization process to determine the single payment source, the first optimization process being distinct from the second optimization process; and  
the processor inputs a plurality of selected payment sources, and performs the second optimization determination to determine which one of the selected payment sources is the single payment source.

By such Amendment, features of claim 50 are added to claim 48. The Office Action sets forth the alleged basis of the rejection of claim 50 on page 5, lines 4-6, of the Office Action. The Office Action asserts:

Claim 50, wherein the processor identifying a single payment source includes the processor performing a second optimization process to determine the single payment source (column 10, lines 32-57 and column 12, lines 1-34 and column 15, lines 48-51).

However, of particular note, the referenced portions of Johnson upon which the Office Action

relies for the claimed “second optimization process” are indeed the same as those portions of Johnson relied upon for the first optimization, i.e., see the Office Action on page 4, lines 15-16 wherein the Office Action sets forth:

... the processor using the first information and payment platform information in the optimization determination (column 10, lines 32-57 and column 12, lines 1-34 and column 17, line 65 thru column 18, line 43 ...

And relatedly, Applicant submits that such referenced sections of Johnson do not set forth two (2) distinct optimization processes. Thus, the Office Action is clearly relying on the same disclosure of Johnson to teach both the claimed optimization processes. Such reliance fails to support the asserted 35 U.S.C. 102 rejection.

Applicant further notes that the only section of Johnson relied upon in the rejection of claim 50, that was not relied upon for the first optimization of claim 48 (see Office Action page 5, lines 4-6), is Johnson’s disclosure at column 15, lines 48-51. Therein, Johnson describes:

(n) The merchant notifies the customer which instrument was selected, obtains final customer authorization for the charge (if necessary), and processes the credit card payment to the credit card acquirer.

Applicant submits that such disclosure of Johnson can not fairly teach the second optimization as recited in claim 48 (previously in claim 50). Indeed, Applicant submits that such disclosure of Johnson sets forth little more than a teaching of notification to the customer.

Accordingly, since the rejection of claim 50 in particular is deficient for the reasons as set forth above, Applicant requests withdrawal of the 35 U.S.C. 102 rejection.

Applicant further notes the assertions regarding the second optimization of claim 78 (see Office Action on page 10, lines 14-17) and claim 79 (see Office Action on page 12, lines 6-8).

Applicant submits that such assertions fail to fairly support the 35 U.S.C. 102 rejection for

reasons similar to those discussed above (regarding claim 50).

Applicant respectfully submits that Johnson fails to teach or suggest each and every feature as recited in claim 48. It is respectfully submitted that claim 48 is allowable at least for the reasons set forth above. Further, independent claims 73 and 79 recite patentable subject matter at least for reasons similar to those set forth above with respect to claim 1.

The dependent claims recite patentable subject matter based on their dependencies on the respective independent claims, as well as for the additional features such dependent claims recite.

Withdrawal of the 35 U.S.C. §102 rejection is respectfully requested.

B. Conclusion

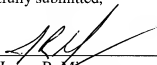
For at least the reasons outlined above, Applicant respectfully asserts that the application is in condition for allowance. Favorable reconsideration and allowance of the claims are respectfully solicited.

It is believed that no fee is due in connection with this filing. However, if it is determined otherwise, the Commissioner is hereby authorized to charge our Deposit Account No. 50-0206.

Respectfully submitted,

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